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No. 1445

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In the Supreme Court of the United States

OCTOBER TERM, 1970

EDWARD DORR,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a writ of certiorari be issued to review the judgment of the Supreme Court of Illinois entered in this cause on November 18, 1970.

OPINION BELOW

The Opinion of the Supreme Court of Illinois (not yet reported) is reprinted herein as Appendix A.

JURISDICTION

The judgment of the Supreme Court of Illinois (Appendix B, *infra*) was entered on November 18, 1970. A timely petition for rehearing was denied January 27, 1971 (Ap-

pendix C, *infra*). This Petition is filed within 90 days of the date of the denial of Petitioner's petition for rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether due process of law, guaranteed defendants in State proceedings by the Fourteenth Amendment to the Constitution, is violated when, in a proceeding to hold a corporate officer in contempt for failing and refusing to turn over certain corporate books and records to a grand jury pursuant to subpoena duces tecum, the State fails to offer any evidence of the materiality and relevancy of those documents to the investigation ostensibly being conducted.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution provides in pertinent part:

> "No State shall * * * deprive any person of life, liberty, or property, without due process of law; * * *"

STATEMENT

A special grand jury, impanelled at the request of the Attorney General of Illinois[1] by the Chief Judge of the Criminal Division of the Circuit Court of Cook County, Illinois, to investigate alleged criminal violations of the Illinois Antitrust Act,[2] caused a subpoena duces tecum to be served upon Petitioner, Edward Dorr, president of the Roth-Adam Fuel Company, an Illinois corporation engaged in the retail sale of coal. This subpoena (see App. A, *infra*, pp. 7-15) demanded the production, on a date certain, of various Roth-Adam books, records and documents covering approximately a five-year period. Following a conference between its attorneys and representatives of the Attorney General (who were appropriately authorized to act on behalf of the grand jury), Roth-Adam, and Petitioner, delivered to the grand jury many of the demanded books, records and documents. This delivery was acompanied by an expression on behalf of Petitioner and Roth-Adam that, as a result of this conference, they considered the delivery to constitute full compliance with the subpoena and that, in the event the grand jury did not and made further demands under the authority of the subpoena, Petitioner and the company reserved the right to challenge the "lawfulness of said subpoena and the scope and breadth of its demands" as they related to books, records and documents not produced and the subject of such further demands.

Among the books, records and documents produced at this time were Internal Revenue Service "W-4" forms, which contained the names, addresses and job positions

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[1] See, Ill. Rev. Stat., 1969, Ch. 38, par. 60-6.

[2] Ill. Rev. Stat., 1969, Ch. 38, pars. 60-1 et seq.

(in most instances) of all employees of the company, and the "Check and Voucher Register" which itemized every check written by the company (excepting individual payroll checks) during the period under investigation.[3] This register reflected the serial numbers of checks, the dates on which they were written, the payees, the amounts for which they were written, and the bookkeeping accounts to which each payment was credited. It was accompanied by a further document explaining the number code used by the company to designate these various bookkeeping accounts. In addition, the "Check and Voucher Register" reflected a running balance of the company's bank account, and a similar running balance of amounts credited to each bookkeeping account during the fiscal year.

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[3] In addition to the books and records described in the text, the company turned over the following: copies of the Certificate of Incorporation, By-laws, and Corporate minutes commencing with the Minutes of the Annual Meeting of Stockholders—June 30, 1965, as part of the "Corporate Records"; the 1969 Annual Statement, containing the names and addresses of the Officers and Board of Directors; the "Profit and Loss" statements and "Balance Sheets" for the fiscal years ending June 30, 1965, 1966, 1967, 1968, 1969; copies of price lists commencing with that of December 1, 1966; a file containing all documents relating to bids submitted by Roth-Adam; a file containing all documents relating to conventions, meetings, etc.; two files containing all correspondence between Roth-Adam and the Chicago Coal Merchants Association, its members and associate members, etc.; two files containing all correspondence between Roth-Adam and any federal, state, local, or other public bodies and regulatory agencies; a file containing all documents relating to complaints received by Roth-Adam; a "Blue Book of Telephone Numbers"; and, a file containing copies of work sheets showing salesmen's expenses for the fiscal years ending June 30, 1965, 1966, 1967, 1968, and 1969.

Subsequently, the grand jury asserted that additional books, records and documents were sought by the original subpoena. Among records sought by this assertion were virtually all of the company's payroll records and all of its documents supporting credits to the various accounts paid, or payable which were described in the "Check and Voucher Register." In response, Petitioner and the company produced supporting documents relating to salesmen's expenses, miscellaneous selling expenses, miscellaneous, general and administrative expenses, notes receivable, and miscellaneous investments.[4]

Petitioner and the company refused to produce: all payroll checks issued during the period covered by the subpoena; copies of the company's quarterly employer tax returns (commonly referred to as IRS forms 941); and all supporting documents relating to the following bookkeeping accounts: salesmen's salaries, advertising, miscellaneous commissions, office salaries, officers' salaries, legal, auditing and collection fees, contributions, loans receivable, sundry receivables, investment of seasonable funds, prepaid salaries and wages, and accrued salaries and wages.

Both the agreement to produce certain additional records and the refusal to produce other documents were expressed in a verified petition to quash the subpoena duces tecum, which was filed before the Chief Judge of the Criminal Division of the Circuit Court of Cook County, Illinois, and which prayed that the court conduct an inquiry into

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[4] Supporting documents for the last two named accounts were turned over only because the company had merely one document (covering the five-year period encompassed by the subpoena) for each account.

the matters alleged and, as a consequence, quash the subpoena, or such portions thereof as were required by law to be quashed. This petition alleged, *inter alia,* that the demand for the documents which Roth-Adam had refused to produce was unreasonable and in violation of the company's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States, as well as applicable provisions of the Illinois Constitution, because there had been no showing that these documents were material and relevant to the purported investigation being conducted, and because the grand jury had demanded the production of a mass of documents in contrast to specifying particular documents relating to particular transactions. (Rec. C10-14.)

The Attorney General filed an unverified answer alleging, without recitation of specific facts, that the documents demanded by the grand jury were "relevant and material to the antitrust investigation of the Illinois coal industry currently being conducted by the Special Grand Jury;" and that the demand was "specific in that it asks for particular books, records and documents which are necessary for the Special Grand Jury to conduct a thorough antitrust investigation of the Illinois coal industry." The answer prayed that the petition to quash the subpoena be denied.

Both parties filed memoranda of law, and oral argument was had upon the issues. No evidence was taken. Thereafter the Circuit Court entered its order denying the petition to quash and directing Petitioner to appear on a date certain before the grand jury and to produce those documents which he had theretofore refused to produce.

Petitioner appeared before the grand jury, as directed, but continued his refusal to produce the disputed documents. Thereafter, the Attorney General filed an unveri-

fied Motion for Rule to Show Cause, alleging the foregoing facts and praying that Petitioner be ordered to show cause why he should not be held in contempt of the Circuit Court "by reason of his failure to comply with the Order heretofore entered." The motion contained no allegations concerning the relevancy and materiality of the documents which Petitioner had refused to produce.

The Rule was entered, and Petitioner was given leave to file a written answer. Petitioner's answer, under oath, admitted the factual allegations of the Attorney General's Motion, alleged that he had been of the opinion that the subpoena had been fully and completely complied with by the original delivery of books, records and documents, and further alleged that his refusal to produce documents as directed by the order of the Circuit Court "was not wilful or deliberate, or designed to bring disrepute upon the court or to impede the due administration of justice, but was based upon the advice of his counsel that the demand for the said records and documents was unlawful and unreasonable, and in violation of" Roth-Adam's constitutional rights. These rights were identified as those guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States, and similar provisions of the Illinois Constitution. In further answer, Petitioner specifically adopted and incorporated those "grounds and arguments as to the unlawfulness and unreasonableness of the said demand for books, records, and documents heretofore urged in his Petition to Quash the said subpoena duces tecum * * *" (Rec. C71-73.)

At the proceeding which followed, Petitioner again admitted his failure to produce the documents, whereupon the State rested without introducing any evidence. At this point, Petitioner questioned whether the State intended to rest without submitting evidence. The court responded:

"On what? What is the evidence? I mean, it is an order to produce records and the refusal to produce them and that is the issue. So the Court will direct the Attorney General to draft an order holding the defendant in contempt." However, in response to Petitioner's request to be allowed to introduce evidence in his defense, the court permitted the introduction of the W-4 forms and the "Check and Voucher Register" (both originally turned over to the grand jury) as defense exhibits in support of Petitioner's contention that the grand jury had at its disposal sufficient company records to enable it to particularize those payroll records and supporting financial records which it wished to examine.

Petitioner then rested, and, without the introduction of further evidence by the State, the court found Petitioner guilty of willful civil contempt and ordered him committed to the Cook County Jail until such time as he complied with the order directing him to turn the disputed documents over to the grand jury. Petitioner was released on bail pending appeal.

He appealed directly to the Illinois Supreme Court, claiming that his case presented "fairly debatable" questions arising under the Constitutions of the United States and the State of Illinois,[5] viz: that he was denied due process of law in the foregoing court proceedings by reason of the failure of the State to introduce evidence of the relevancy and materiality of the disputed documents; and that the subpoena had been drawn and enforced in violation of his company's Fourth and Fourteenth Amendment rights by reason of the grand jury's failure to particu-

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[5] Illinois Supreme Court Rule 603 (Ill.Rev.Stat., 1969, Ch. 110A, § 603):

larize specific documents from the company's records when the grand jury had the means at its disposal to do so through previously submitted records.

The Illinois Supreme Court ruled: "In the present case, we believe that the documents which respondent [Petitioner] refused to produce are patently relevant to an antitrust investigation, and it was accordingly unnecessary for the Attorney General to introduce evidence satisfying that criterion." (App. A, *infra*, p. 5) The Court also held that, as Petitioner had not complained that he was unable to ascertain what documents were demanded by the grand jury, his arguments concerning the failure of the grand jury to particularize which documents it wanted was "in the context of this case merely an alternate manner of arguing that relevance of the materials sought must be established * * *." (App. A, *infra*, p. 6)

REASONS FOR GRANTING THE WRIT

In this Petition Petitioner questions only whether due process requires proof of materiality and relevancy of corporate documents as a prerequisite to an adjudication of contempt for failure to produce those documents in response to a grand jury subpoena duces tecum. The Court has previously held that a conviction of a criminal offense which is totally unsupported by evidence offends the due process clause (*Thompson* v. *City of Louisville,* 362 U.S. 199 (1960)), and has only recently held that the concept be expanded to include the requirement that such proof as is made be beyond a reasonable doubt. See *In re Winship,* ..... U.S. ....., 90 S.Ct. 1068, 1073 (1970). The second stage—that is, whether due process requires proof beyond a reasonable doubt—need not be reached in this case, however, for at no time has the State offered any evidence, in any form, concerning the relevancy and materiality to the grand jury's investigation of the disputed documents.

Because Illinois follows federal law (*Cobbledick* v. *United States,* 309 U.S. 323 (1940)) concerning the non-appealability of trial-court actions seeking to quash subpoenae duces tecum in cases such as this,[6] Petitioner could only test the validity of the trial judge's ruling on the questions of relevance and materiality by submitting himself to a contempt proceeding. Thus it is, as the Illinois Supreme Court recognized, that the real issue in this case has been, not whether Petitioner appeared before the grand jury and produced books and records as he was directed

[6] There is no case law in Illinois on the point. This claim is made on the basis of counsels' experience in this and other cases.

to do by the trial judge's order, but whether those documents were relevant and material. Answering Petitioner's claim below that the failure to require evidence of these essential factors (see, e.g., *Hale* v. *Henkel,* 201 U.S. 43, 77 (1906); *Federal Trade Commission* v. *American Tobacco Co.,* 264 U.S. 298, 306 (1924)) was a denial of rights guaranteed by the due process clause of the Fourteenth Amendment, the Illinois Court ruled, in substance, that where relevance and materiality of disputed documents are "patent" from the nature of the grand jury's investigation, no evidence of these essential factors need be introduced. (App. A, *infra,* pp. 5-6)

The factors of relevance and materiality are, of course, legal issues, normally decided by a court following some showing of facts from which the necessary legal conclusion can be drawn. Cf. *In re Bart,* D.C.Cir. 1962, 304 F.2d 631, 637. By permitting the trial judge to draw this conclusion without a factual showing on the part of the State, the Illinois Court has deprived Petitioner of the opportunity to show, by testimony, or cross examination, or counter-affidavit, that the documents which the grand jury seeks are not truly material and relevant to the investigation being conducted, even though on the face of the matter they may appear to be. See, e.g., *Application of Linen Supply Cos.,* D.C.N.Y. 1954, 15 F.R.D. 115; *People* v. *Lurie,* 39 Ill.2d 331 (1968).

Thus the Illinois Court assumed that records showing expenditures by the company would be relevant because they might show payments to others "as part of a price fixing or market allocation scheme." (App. A. *infra,* pp. 5-6) No effort was made by the State to support this hypothesis by proof: 1) that price-fixing or market alloca-

tion schemes are often, or even sometimes, characterized by payments to competitors; or 2) that any evidence of financial manipulation of this sort had been already uncovered by the current investigation; or 3) that there was some basis for suspicion, based on the extensive financial records already turned over to the grand jury, that this company had engaged in financial manipulation of this type bearing on anti-trust activities.

In line with this last possibility, a hearing into the questions of relevance and materiality would have shown that what the grand jury sought by its broad demand included quite literally supporting documents for payments as small as $10.00.[7] While the grand jury may have the authority to delve into the internal financial affairs of a company upon a showing that even such financial transactions as these may be related to an anti-trust investigation the enforcement of such authority by contempt sanctions without such a showing violates an essential precept of due process.

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[7] Some brief explanation may be in order. When the company purchases an item for an employee, or a customer, expecting to be reimbursed for the cost, the following entries are made in the company's books and records: As the company pays the seller, "bank" is credited and "sundry receivables" debited by the amount of the payment; the entry in the "check and voucher register" shows the payee of the company's check (the seller), the account for which the check was written (in this case "713"—"sundry receivables") and the amount of the check. Thus, if the company were to purchase a tire for an employee's personal use, expecting to be reimbursed, the check and voucher register would show a payment of $10.00 to the tire company for account 713—sundry receivables. The grand jury's demand for all supporting documents in account 713 requires the company to provide documents evidencing this type of petty transaction upon the supposition that ten-dollar payments were employed to violate the anti-trust laws.

If corporation records may be subject to subpoena without a factual showing, but merely upon an assumed relevance, the corporation served with any grand jury subpoena has only one of two courses open to it: 1) notwithstanding its acknowledged Fourth Amendment rights, which, at least in the strict area of search and seizure, are protected against governmental intrusion by a requirement that a judicial officer authorize the intrusion only after a factual showing of probable cause (see, e.g., *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Spinelli* v. *United States*, 393 U.S. 410 (1969) and despite the fact that a mere assertion of the investigator that such records are necessary for a pending investigation is all that anyone—the corporation or the court—has before it, the corporation must open up its most private records for governmental inspection; or 2) the corporation must suffer one or more of its corporate officers being imprisoned, presumably upon the premise that the refusal to produce records actually interferes with the grand jury's investigation, but again without any factual support for that premise.

The Petitioner's company chose the last of these two alternatives in this case. Petitioner stands committed to the Cook County Jail because he has refused to produce records in compliance with a grand jury subpoena, even though the relationship of those records to the grand jury's investigation has never been articulated, and has never been elevated to the level of a sworn statement. In this connection, the reasoning of the United States Court of Appeals for the District of Columbia in an analogous matter—proceedings to compel a witness to testify by a grant of immunity—is pertinent:

> "However summary the proceeding and tentative the finding, the court's ruling should rest on a sworn statement. See *Ullmann* v. *United States,* [350 U.S. 422] * * * The judgment is based on facts and those facts should be presented to the court in proper form, even if only on information and belief.* * *" *In re Bart,* D.C.Cir. 1962, 304 F.2d 631, 637.

The point, as in *In re Bart,* is not so much that the proceedings of the grand jury be disclosed, but that the company be given an opportunity to present facts showing non-relevancy and immateriality, and, most important, that the court be given facts from which it can arrive at an informed legal conclusion. Thus does due process enter the picture—giving to the corporation and its agents a meaningful hearing, and to the court a basis for making an informed, intelligent judgment.

CONCLUSION

For the reasons advanced herein, the Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

Docket No. 43277—Agenda 43—September, 1970.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, *vs.* EDWARD DORR, Appellant.

MR. JUSTICE CULBERTSON delivered the opinion of the court:

This is an appeal from an order of the circuit court of Cook County adjudging Edward Dorr (herein referred to as respondent) in contempt of court for wilfully failing to comply with a court order requiring the production of certain documents theretofore requested from him under a *subpoena duces tecum*. The presence of constitutional questions brings the cause directly to this court. (See our Rule 603.) 43 Ill.2d R. 603.

The record before us discloses that a special February, 1970, Cook County grand jury, impaneled for the purpose of investigating possible violations of the Illinois Antitrust Act (Ill. Rev. Stat. 1969, ch. 38, par. 60—1 *et seq.*) within the coal industry in this State, caused the issuance and service upon respondent of a *subpoena duces tecum* calling for the production of documents, books, and records, of the Roth-Adam Fuel Company, of which respondent is president.

In response to the subpoena, the salient points of which appear as an appendix hereto, respondent delivered to the grand jury the following documents relating to Roth-Adam: Copies of the certificate of incorporation, by-laws, and corporate minutes commencing with the minutes of the annual meeting of stockholders on June 30, 1965, as part of the

"Corporate Records"; the 1969 annual statement, containing the names and addresses of the officers and board of directors; W-4 forms, which contain the names, addresses, and positions of employees; the "Check and Voucher Register", reflecting all disbursements made by Roth-Adam, except for payroll, but including payment of commissions; the "Profit and Loss" statements and "Balance Sheets" for the fiscal years ending June 30, 1965, 1966, 1967, 1968, 1969; copies of price lists commencing with that of December 1, 1966; a file containing all documents relating to bids submitted by Roth-Adam; a file containing all documents relating to conventions, meetings, *etc.;* two files containing all correspondence between Roth and the Chicago Coal Merchants Association, its members and associate members, *etc.;* two files containing all correspondence between Roth-Adam and any Federal, State, local, or other public bodies and regulatory agencies; a file containing all documents relating to complaints received by Roth-Adam; a "Blue Book of Telephone Numbers"; and a file containing copies of work sheets showing salesmen's expenses for the fiscal years ending June 30, 1965, 1966, 1967, 1968, and 1969.

Some time later the Attorney General, on behalf of the special grand jury, communicated a further demand to respondent through his counsel, specifically designating by category the types of documents further desired. In this regard, respondent raises no contention that this later demand requested materials not originally called for in the subpoena. After conferences between representatives of the Attorney General and counsel for respondent, the latter agreed to produce all "back-up" documents relating to salesmen's expenses; miscellaneous selling expenses, and miscellaneous, general and administrative expenses, notes receivable, and miscellaneous investments. Respondent,

however, refused to produce the following materials: All payroll checks issued during the period covered by the subpoena; copies of the quarterly employer tax returns of Roth-Adam, commonly referred to as IRS forms 941; and all documents related to the following bookeeping accounts: salesmen's salaries, advertising, miscellaneous commissions, office salaries, officers' salaries, legal, auditing, and collection fees, contributions, loans receivable, sundry receivables, investment of seasonable funds, prepaid salaries and wages, and accrued salaries and wages. There is, again, no question raised that the foregoing documents and records were not covered by the terms of the subpoena itself.

On the ground that the demand for the documents and records which respondent has refused to produce was invalid as a "constructive" unreasonable search and seizure (see *People* v. *Lurie,* 39 Ill.2d 331; *People* v. *Allen,* 410 Ill. 408, 513), respondent petitioned the circuit court for an order quashing the subpoena. The Attorney General filed an answer to the petition, and after a hearing, the petition was denied and respondent was ordered to produce the documents in question.

Thereafter, the Attorney General filed a motion for a ruling directing respondent to show cause why he should not be held in contempt of court for refusing to produce the requested materials. The ruling issued, and respondent, in answer thereto, raised the same constitutional objections theretofore set forth in his petition seeking to quash the subpoena. At the hearing on the rule to show cause, respondent admitted his refusal to produce the documents in question and was thereupon adjudged in contempt of court and committed to the county jail. Bail was set at $5000, and the requisite $500 cash deposit was made.

It is argued by respondent that insofar as the subpoena called for the materials which he refused to produce, it constitutes an attempted unreasonable search and seizure prohibited by the fourth and fourteenth amendments to the Federal constitution and section 6 of article II of the Illinois constitution. Specifically, respondent contends that there was no showing that the documents and records sought are material or relevant to the grand jury's investigation. In that regard, the Illinois Antitrust Act makes it illegal for any person or corporation to:

> "(1) Make any contract with, or engage in any combination or conspiracy with, any other person who is, or but for a prior agreement would be, a competitor of such person:
>
> a. for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged for any commodity sold or bought by the parties thereto * * *;
>
> b. fixing, controlling, maintaining, limiting, or discontinuing the * * * mining, sale or supply of any commodity * * * for the purpose or with the effect stated in paragraph a. * * * ;
>
> c. allocating or dividing customers, territories, supplies, sales, or markets, functional or geographical, for any commodity or service; * * * ." Ill. Rev. Stat. 1969, ch. 38, par. 60—3.

Because of the numerous and varied activities which may constitute substantive violations of the quoted portions of the Act, grand jury investigations seeking to ascertain the probable existence of such violations must be given the broadest scope possible, consistent, of course, with consti-

tutional limitations. Thus in the circumstances here present, what we observed in *People* v. *Allen,* 410 Ill. 508, 517, is particularly pertinent: "In litigated cases, materiality can be fixed with a relatively high degree of precision by reference to the issues formulated in the pleadings. No standard of comparable certainty exists with respect to an inquiry by a grand jury. The very purpose of such an inquiry is to uncover matters previously unknown to the investigating agency. It is not necessary that a 'cause' or 'specific charge' be pending before the grand jury as a condition to its right to command the production of documents. (*Hale* v. *Henkel,* 201 U.S. 43; *Wilson* v. *United States,* 221 U.S. 361.) Such a requirement, as pointed out in *Hale* v. *Henkel,* would sharply curtail the historic function of the grand jury. '[R]elevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry.' *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186.

"Unless the effectiveness of the grand jury in the administration of criminal law is to be drastically impaired, the most that can be required as a standard of materiality is as precise a statement of the subject under investigation as the circumstances permit."

In the present case, we believe that the documents which respondent refused to produce are patently relevant to an antitrust investigation, and it was accordingly unnecessary for the Attorney General to introduce evidence satisfying that criterion. Thus, a review of the payroll checks may uncover payments made not to *bona fide* employees of Roth-Adam but to competitors, either directly or through strawmen, as a part of a price-fixing or market allocation

scheme. (That respondent willingly produced the W-4 forms it held in connection with its acknowledged employees clearly cannot preclude the grand jury from obtaining payroll checks, as it is difficult to imagine that the company would have a competitor or strawman fill out a W-4 form prior to the receipt of an illegal payment under the guise of a payroll expenditure.) The quarterly employer tax returns are equally material and relevant to the investigation of possible antitrust violations, as are the records pertaining to the various accounts payable and receivable. Under these circumstances, we cannot perceive that the grand jury's demand for production of the materials respondent refused to produce in any way transcended the legitimate purpose of the investigation.

It should be noted that respondent makes no claim that he is unable to ascertain exactly what documents have been demanded, and there is thus no question posed concerning the specificity of the demand (see *e.g., People ex rel. Legislative Commission* v. *Keefe,* 36 Ill.2d 460). The argument set forth in respondent's brief that subpoenas "must specify with reasonable particularity the subjects to which the desired writings relate" is in the context of this case merely an alternate manner of arguing that relevance of the materials sought must be established, and, as we have seen, the records and documents sought here are patently material and relevant to an investigation into possible violations of the Antitrust Act.

The judgment of the circuit court of Cook County finding respondent in contempt of court for wilfully refusing to obey the order to produce the documents in question is affirmed.

Judgment affirmed.

APPENDIX

[To Illinois Supreme Court Opinion]

(*Subpoena Duces Tecum*)

I. Definitions

1. The term "coal" as used in this subpoena shall mean and include any or all types, classes and kinds of coal such as anthracitic, bituminous, subbituminous, and lignitic of any and all sizes and characteristics, whether or not said coal has gone through preparations or treatments.

2. The term "low sulfur coal" as used in this subpoena shall mean and include any or all types, classes, or kinds of coal with a total sulfur content of 2.5% or less.

3. The term "association" as used in this subpoena shall include the Chicago Coal Merchants Association, predecessor and successor associations, any or all divisions, subdivisions, sections or subsections thereof, and any or all persons acting for or on behalf of the association, its predecessors or successors, and its divisions, subdivisions, sections or subsections.

4. The term "member" or "associate member" as used in this subpoena shall mean persons belonging to, paying dues to, or in any way affiliated with the association.

5. The term "coal dealer" as used in this subpoena shall mean any person or company, including affiliates or subsidiaries engaged in the purchase, sale, storage, delivery and trimming of coal, and shall include any and all persons acting for or on behalf of such person or company.

6. The term "coal operator" or "coal mine operator" as used in this subpoena shall mean any person or company, including affiliates or subsidiaries engaged in the mining, sizing, washing and/or other preparation, and delivery of coal; and shall include any and all persons acting for or on behalf of such person or company.

7. Wherever the word "person" or "persons", or "company" or "companies" is used herein, it includes (unless otherwise specified) but is not limited to individuals, individual proprietorships, trusteeships, partnerships, companies, and corporations, including (except with respect to individuals) their predecessors or successors, affiliates and controlled subsidiaries, and wholly-owned subsidiaries.

8. The term "document" or "documents" as used in this subpoena includes (unless otherwise specified), but is not limited to originals, where available, and otherwise, a carbon or other copy of each item of correspondence, graphs, charts, tables, minutes, minute books, papers, letters, memoranda, and written communications of any kind, notes, and records of any communications, instructions, reports, cables, telegrams, radiograms, and other messages in the possession or control of the

ROTH ADAMS FUEL COMPANY, (hereinafter referred to as ROTH), or in the possession or control of any officer, director, agent, employee or representative of ROTH, acting in his capacity as such officer, director, agent, employee or representative of ROTH, acting in his capacity as such officer, director, agent, employee or representative, including documents, which were prepared by an officer, director, agent, employee, or representative of ROTH, which did not leave custody of the person preparing the same.

9. The term "awarding authority" or "awarding authorities" as used in this subpoena shall mean all persons, including, but not limited to building managers; engineers, purchasing agents; Federal, State, municipal and local governing or administrative bodies; committees;

school board; and other organizations or persons representing either private, public, or charitable bodies or institutions vested with the responsibility of designating and selecting coal dealers, among others to perform supply contracts, including contracts for the sale, storing, delivery, and trimming of coal.

10. The term "complementary bid" or "complementary bids" as used in this subpoena shall mean any bid or quotation submitted by a coal dealer to an awarding authority in connection with the sale, storage, delivery or trimming of coal at the request of, pursuant to an agreement or understanding, express or implied, with another coal dealer or operator, group or association of coal dealers, or operators or other person or persons, which bid or quotation is contrived in excess of another bid or bids, submitted or to be submitted, for the identical sale.

II. Scope

11. Each paragraph in the subpoena covers the period, unless otherwise specified, from January 1, 1965 up to and including the date of service of this subpoena.

III. Documents to be Produced

12. A copy of the charter, articles of incorporation, by-laws and rules and operating procedure of ROTH, including all amendments thereto, from the date of formation of the company to the date of service of this subpoena.

13. All minutes (including rough drafts, handwritten notes of minutes, minute books, stenographic transcriptions, tape records, and notes of records later reduced to minutes) of all Board of Directors' meetings, officers' meetings, and all other meetings.

14. All books, records, and documents which show, relate or refer to, in whole or in part:

(a) The names and addresses of all members of the Board of Directors, officers, management officials and employees of ROTH, including the office or position of each such person;

(b) All disbursements, in cash or otherwise, including but not limited to cancelled checks and check stubs, made by ROTH, and all documents, including books of accounts, reflecting same;

(c) The source, date, nature and amount of each item of income, money or property received by ROTH including but not limited to gross sales, and all documents, including books of accounts, reflecting same;

(d) The financial condition of ROTH, including but not limited to financial statements and audit reports, profit and loss statements, and balance sheets.

15. All books records and documents which show, relate or refer to, in whole or in part, to actual, proposed, suggested or contemplated prices and price changes in coal.

16. All documents containing annual reports, statistical reports, and any other reports which have to do with, refer or relate to, or concern the annual volume of business in the purchase, sale, delivery or trimming of coal in the Illinois area.

17. All documents containing annual reports, statistical reports and any other reports which have to do with, refer or relate to, or concern the supply of coal available for retail sales in the Illinois and/or Chicago area.

18. All documents containing annual reports, statistical reports and any other reports which have to do with, refer or relate to, or concern the supply of low sulfur coal available in the Illinois and/or Chicago area.

19. All documents which embody, report on, relate or refer to, or concern any written or oral exchange of information as to contracts or proposed contracts, bids or proposed bids for the sale or submission or nonsubmission of prices, bids, or quotations for the sale of coal between ROTH and any coal dealer or operator or group or groups of coal dealers and/or operators, or between ROTH and the association.

20. All documents which embody, report on, relate or refer to, or concern bids and computation of bids submitted by ROTH for the sale, storage, delivery or trimming of coal including, but not limited to, such documents as show the dates of submission of each bid and the amount or amounts thereof, the names, addresses and position of the person or persons preparing the bid or bids.

21. All documents relating or referring to, concerning, or showing agreements between ROTH and any trade union or local subdivision thereof, its officers, business agents, representatives or employees.

22. All documents which relate or refer to the actual, contemplated or proposed classification of any or all coal dealers by size, sales, purchases, number of employees, financial responsibility, or by any other criteria.

23. All documents which report on, relate or refer to, or concern the actual, contemplated or proposed allocation or division of marketing territories for the sale, storage, delivery or trimming of coal by or among ROTH and any coal dealer or operator, group or groups of coal dealers or operators.

24. All documents which relate or refer to, or concern any convention, meeting, function, trips, gatherings and/or outings, either formal or informal, sponsored, arranged or initiated in whole or in part by the association, its members or associate members, or any of them including but not limited to, announcements of such conventions, meetings, functions, trips, gatherings and/or outings, reservations covering accommodations for meetings and lodging; travel arrangements, list of names and addresses of those registered and/or in attendance at the convention, meeting, function, trips, gatherings and/or outings; together with the name, address and location of the hotels, motels or other establishment where each of those in attendance stayed.

25. All documents which relate or refer to, concern or show:

(a) The allocation of a contract or contracts for the sale, storage, delivery, or trimming of coal to a coal dealer or coal dealers, or the designation or selection of a coal dealer or coal dealers as low bidder or bidders on a contract for the sale, storage, delivery or trimming of coal by ROTH, or by a coal dealer or coal operator, group or association of coal dealers or operators, or by any person or persons other than an awarding authority;

(b) The submission or nonsubmission, or the proposed, suggested or contemplated submission or nonsubmission of complementary bids or quotations for the sale, storage, delivery or trimming of coal, by a coal dealer or group or groups of coal dealers, or the withdrawal or alteration, or the proposed, suggested, or contemplated withdrawal or alteration of a bid or quotation for the sale, storage, delivery or trimming of coal;

(c) Requests, suggestions or proposals made by any person, including, but not limited to ROTH, the association, its members and associate members, any coal dealer or operator or group or groups of coal dealers or operators, to a coal dealer to refrain from submitting a bid or quotation for the sale, storage, delivery, or trimming of coal; or to submit a suggestion or fixed quotation for the sale, storage, delivery or trimming of coal;

(d) The payment, offer, or contemplated or suggested offer of payment of any rebate, commission, kickback, or other inducement to a coal dealer or operator by ROTH, or by the association or by any member or members or associate member or members of the association, or by a coal dealer or operator, group or groups of coal dealers or operators;

(e) Any rebate, commission in the form of a sum of money or article of value, or any other consideration (excluding taxes and license fees prescribed by Federal, State or municipal statutes, of ordinances, laws or regulations), paid, or proposed, suggested or contemplated to be paid by ROTH, the association or any member or members or associate member or members thereof, or by a coal dealer or operator or group or groups of coal dealers or operators, to an awarding authority, its agents, employees, representatives or officials or to anyone connected directly or indirectly with the sale, storage, delivery or trimming of coal;

(f) The refusal or abstention, or the suggested or proposed refusal or abstention of ROTH, or the association, or any or all of its members or associate mem-

bers or of a coal dealer or group or groups of coal dealers to submit bids or quotations for the sale, storage, delivery, or trimming of coal for any reason whatsoever.

26. All documents, including books and records, relating to any person or organization hired or otherwise retained by ROTH, to make notes or make a stenographic record of any meetings held by

27. All correspondence, letters, memoranda, post cards and brochures, and written communication from ROTH to the association, its members and associate members, coal dealers or operators, or group of coal dealers or operators.

28. All correspondence, letters, memoranda, post cards and brochures, and written communication from the association, its members and associate members, coal dealers or operators, or group of coal dealers or operators to ROTH.

29. All correspondence, letters, memoranda, post cards and brochures, and written communication from ROTH to Federal, State, local or other public bodies and regulatory agencies.

30. All correspondence, letters, memoranda, post cards and brochures, and written communication from Federal, State, local, or other public bodies and/or regulatory agencies to ROTH.

31. All documents which report on, relate or refer to, or concern complaints, either directly or indirectly, received by ROTH, and all reports or records reflecting any investigation, and/or disposition made of said complaint by the company.

32. All appointment books, telephone records and office diaries for the officers, directors, employees and agents of ROTH.

33. All monthly expense reports, accounts, or similar documents for each of the officers, directors, employees, and agents of ROTH.

34. All books, records and documents which show, relate or refer to, in whole or in part, to the gross margin per ton of coal sold during the period covered by this subpoena to any awarding authority.

APPENDIX B

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

AT A TERM OF THE SUPREME COURT, *begun and held in Springfield, on Monday, the 9th day of November in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.*

• • •

Be It Remembered, *that, to-wit: on the 18th day of November 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:*

PEOPLE STATE OF ILLINOIS,

Appellee,

No. 43277 vs.

EDWARD DORR

Appellant.

Appeal from Circuit Court Cook County
(Criminal Division)

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now,

being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment *aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.*

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County (Criminal Division) *aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.*

APPENDIX C

• • •

BE IT REMEMBERED, that, to-wit: on the 27th day of January, A.D. 1971, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE STATE OF ILLINOIS, *Appellee,*

No. 43277 vs.

EDWARD DORR, *Appellant.*

Appeal from Circuit Court Cook County
(Criminal Division)

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.